



April 6, 2005

ENGROSSED

HOUSE BILL No. 1179

DIGEST OF HB 1179 (Updated April 1, 2005 10:38 am - DI 110)

Citations Affected: IC 24-4.5; IC 24-9; IC 28-1; IC 28-5; IC 28-6.1; IC 28-7; IC 28-10; IC 28-11; IC 28-12; IC 28-13; IC 30-2; IC 32-17; noncode.

Synopsis: Updates references to federal laws and regulations in the Uniform Consumer Credit Code and the financial institutions statute. Specifies that Federal Reserve Regulation W applies to a nonmember bank or trust company. Establishes procedures for industrial loan and investment companies consistent with those for commercial banks. Allows credit unions to offer health savings accounts. Requires state chartered credit unions to submit call reports quarterly, instead of semiannually. Revises loan procedures and lending limits for certain loans by state chartered credit unions. Specifies that the director of the department of financial institutions (department) may hire independent contractors to assist with examinations. Extends the exemption from certain state laws preempted by federal law to subsidiaries of state chartered financial institutions. Allows the department to exercise certain enforcement powers jointly with federal regulators. Allows the director of the department to make a temporary appointment to fill a vacancy on an institution's board of directors under certain circumstances. Allows periodic premiums for consumer credit insurance on certain revolving accounts to be calculated by applying

(Continued next page)

Effective: Upon passage; July 1, 2005.

Burton, Woodruff, Oxley, Ruppel

(SENATE SPONSORS — PAUL, LEWIS)

January 6, 2005, read first time and referred to Committee on Financial Institutions.
January 25, 2005, amended, reported — Do Pass.
January 31, 2005, read second time, ordered engrossed. Engrossed.
February 1, 2005, read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 14, 2005, read first time and referred to Committee on Insurance and Financial Institutions.
April 5, 2005, amended, reported favorably — Do Pass.

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the premium rate to the amount of the insurance benefit for the cycle. Specifies that, for purposes of the statute governing the transfer of securities upon the death of the owner, a security account includes an investment management account or custody account with a corporate fiduciary or certain financial institutions with trust powers. Requires the department to develop proposed legislation concerning electronic banking. Allows a payroll savings plan administrator to receive reimbursement on certain static balances. Provides that a person who purchases or is assigned a high cost home loan is not subject to certain claims and defenses.

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April 6, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1179

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-4.5-1-102 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 102. Purposes;
3 Rules of Construction—(1) This article shall be liberally construed and
4 applied to promote its underlying purposes and policies.
5 (2) The underlying purposes and policies of this article are:
6 (a) to simplify, clarify, and modernize the law governing retail
7 installment sales, consumer credit, small loans, and usury;
8 (b) to provide rate ceilings to assure an adequate supply of credit
9 to consumers;
10 (c) to further consumer understanding of the terms of credit
11 transactions and to foster competition among suppliers of
12 consumer credit so that consumers may obtain credit at
13 reasonable cost;
14 (d) to protect consumer buyers, lessees, and borrowers against
15 unfair practices by some suppliers of consumer credit, having due
16 regard for the interests of legitimate and scrupulous creditors;
17 (e) to permit and encourage the development of fair and

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1 economically sound consumer credit practices;
 2 (f) to conform the regulation of consumer credit transactions to
 3 the policies of the Federal Consumer Credit Protection Act; and
 4 (g) to make uniform the law including administrative rules among
 5 the various jurisdictions.

6 (3) A reference to a requirement imposed by this article includes
 7 reference to a related rule of the department adopted pursuant to this
 8 article.

9 (4) A reference to a federal law in IC 24-4.5 is a reference to the law
 10 in effect December 31, ~~2003~~ **2004**.

11 SECTION 2. IC 24-4.5-4-107 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 107. Maximum
 13 Charge by Creditor for Insurance - (1) Except as provided in subsection
 14 (2), if a creditor contracts for or receives a separate charge for
 15 insurance, the amount charged to the debtor for the insurance may not
 16 exceed the premium to be charged by the insurer, as computed at the
 17 time the charge to the debtor is determined, conforming to any rate
 18 filings required by law and made by the insurer with the Insurance
 19 Commissioner.

20 (2) A creditor who provides consumer credit insurance in relation
 21 to a revolving charge account (IC 24-4.5-2-108) or revolving loan
 22 account (IC 24-4.5-3-108) may calculate the charge to the debtor in
 23 each billing cycle by applying the current premium rate to:

24 (a) the average daily unpaid balance of the debt in the cycle;

25 (b) the unpaid balance of the debt or a median amount within a
 26 specified range of unpaid balances of debt on approximately the same
 27 day of the cycle. The day of the cycle need not be the day used in
 28 calculating the credit service charge (IC 24-4.5-2-207) or loan finance
 29 charge (IC 24-4.5-3-201 and IC 24-4.5-3-508), but the specified range
 30 shall be the range used for that purpose; ~~or~~

31 (c) the unpaid balances of principal calculated according to the
 32 actuarial method; **or**

33 **(d) the amount of the insurance benefit for the cycle.**

34 SECTION 3. IC 24-4.5-7-201 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 201. (1) Finance
 36 charges on the first two hundred fifty dollars (\$250) of a small loan are
 37 limited to fifteen percent (15%) of the principal.

38 (2) Finance charges on the amount of a small loan greater than two
 39 hundred fifty dollars (\$250) and less than or equal to four hundred
 40 dollars (\$400) are limited to thirteen percent (13%) of the amount over
 41 two hundred fifty dollars (\$250) and less than **or equal to** four hundred
 42 dollars (\$400).

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(3) Finance charges on the amount of the small loan greater than four hundred dollars (\$400) and less than or equal to five hundred dollars (\$500) are limited to ten percent (10%) of the amount over four hundred dollars (\$400) and less than **or equal to** five hundred dollars (\$500).

SECTION 4. IC 24-9-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. "Home loan" means a loan, other than an open end credit plan, ~~or~~ a reverse mortgage transaction, **or a loan described in IC 24-9-1-1**, that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:

(1) designed primarily for occupancy of one (1) to four (4) families; and

(2) that is or will be occupied by a borrower as the borrower's principal dwelling.

SECTION 5. IC 24-9-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. A person may not:

(1) divide a loan transaction into separate parts with the intent of evading a provision of this article;

(2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or

(3) engage in a deceptive act in connection with a:

(A) home loan; **or**

(B) **loan described in IC 24-9-1-1.**

SECTION 6. IC 24-9-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A person who purchases or is otherwise assigned a high cost home loan is subject to all affirmative claims and any defenses, **except for an affirmative claim or defense pursuant to IC 24-9-3-7**, with respect to the high cost home loan that the borrower could assert against a creditor or broker of the high cost home loan. However, this section does not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan. A purchaser or an assignee is presumed to have exercised reasonable due diligence if the purchaser or assignee:

(1) has in place at the time of the purchase or assignment of the subject loans, policies that expressly prohibit the purchase or acceptance of the assignment of any high cost home loans;

(2) requires by contract that a seller or an assignor of home loans

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to the purchaser or assignee represents and warrants to the purchaser or assignee that either:

(A) the seller or assignor will not sell or reassign any high cost home loans to the purchaser or assignee; or

(B) the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect;

(3) exercises reasonable due diligence:

(A) at the time of purchase or assignment of home loans; or

(B) within a reasonable period after the purchase or assignment of home loans;

intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high cost home loans; or

(4) satisfies the requirements of subdivisions (1) and (2) and establishes that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan based on the:

(A) documentation required by the federal Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(B) itemization of the amount financed and other disbursement disclosures.

(b) A borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of a high cost home loan:

(1) a violation of IC 24-9-4-2 as a defense, claim, or counterclaim, after:

(A) an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan is initiated;

(B) an action to collect on the loan or foreclose on the collateral securing the loan is initiated; or

(C) the loan is more than sixty (60) days in default; within three (3) years after the closing of a home loan;

(2) a violation of this article in connection to the high cost home loan as a defense, claim, or counterclaim in an original action within five (5) years after the closing of a high cost home loan; and

(3) any defense, claim, counterclaim, or action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan, including a violation of this article after:

(A) an action to collect on the loan or foreclose on the collateral securing the loan is initiated;

(B) the debt arising from the loan is accelerated; or

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1 (C) the loan is more than sixty (60) days in default;
 2 at any time during the term of a high cost home loan.

3 (c) In an action, a claim, or a counterclaim brought under subsection
 4 (b), the borrower may recover only amounts required to reduce or
 5 extinguish the borrower's liability under a home loan plus amounts
 6 required to recover costs, including reasonable attorney's fees.

7 (d) The provisions of this section are effective notwithstanding any
 8 other provision of law. This section shall not be construed to limit the
 9 substantive rights, remedies, or procedural rights available to a
 10 borrower against any creditor, assignee, or holder under any other law.
 11 The rights conferred on borrowers by subsections (a) and (b) are
 12 independent of each other and do not limit each other.

13 SECTION 7. IC 28-1-13-1.8 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.8. (a) Loans and
 15 extensions of credit secured by shipping documents or instruments
 16 transferring or securing title covering livestock or giving a lien on
 17 livestock when the market value of the livestock securing the obligation
 18 is not at any time less than one hundred fifteen percent (115%) of the
 19 face amount of the note covered are subject under this section,
 20 notwithstanding the collateral requirements set forth in section ~~1-2~~
 21 **1.5(b)** of this chapter, to a maximum limitation equal to twenty-five
 22 percent (25%) of the capital and surplus.

23 (b) Loans and extensions of credit that arise from the discount by
 24 dealers in dairy cattle of paper given in payment for dairy cattle, which
 25 paper carries a full recourse endorsement or unconditional guarantee
 26 of the seller and that are secured by the cattle being sold, are subject
 27 under this section, notwithstanding the collateral requirements set forth
 28 in section ~~1-2~~ **1.5(b)** of this chapter, to a limitation of twenty-five
 29 percent (25%) of the capital and surplus.

30 SECTION 8. IC 28-1-18.2-5 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) For purposes of
 32 this section, a bank or trust company that is not a member of the
 33 Federal Reserve System is subject to Sections 23A and 23B of the
 34 Federal Reserve Act (12 U.S.C. 371c or 371c-1) **and Federal Reserve**
 35 **Regulation W (12 CFR 223)** to the same extent and in the same
 36 manner as though it were a member of the Federal Reserve System.

37 (b) A violation of Section 23A or 23B of the Federal Reserve Act
 38 (12 U.S.C. 371c or 371c-1) **or Federal Reserve Regulation W (12**
 39 **CFR 223)** by a bank or trust company or a subsidiary of either
 40 constitutes a violation of this section.

41 SECTION 9. IC 28-5-1-4 IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) As used in this section:

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"Automated teller facility" means electronic or mechanical equipment that performs routine transactions for the public at locations off premises of the principal office or branch office of a company that holds a certificate to engage in business under this chapter and that is authorized to issue, negotiate, and sell certificates of investment or indebtedness.

"Branch" means any office, agency, mobile unit, messenger service, or other place of business at which:

- (1) payments into certificates of investment or indebtedness are received;
- (2) checks, negotiable or transferable instruments or orders, or similar instruments are paid; or
- (3) money is lent.

However, the term does not include the principal office of a company or an automated teller facility.

"Financial institution" has the same meaning as in IC 28-1-1-3.

(b) Any domestic corporation organized under the general corporation laws of Indiana may engage in business as an industrial loan and investment company subject to the limitations and restrictions set forth in this chapter. The department may issue a certificate authorizing a corporation to engage in business under this chapter if **after the department determines after a hearing that a public necessity exists in the particular city for the type of industrial loan and investment company for which application is made. However, no certificate may be issued to engage in business under this chapter in a city having a population of less than thirty thousand (30,000) inhabitants, and with respect to cities having a population of thirty thousand (30,000) or more inhabitants, not more than one (1) certificate may be issued for each thirty thousand (30,000) inhabitants of the city: considers and investigates all the following:**

- (1) The financial standing and character of the incorporators, organizers, directors, principal shareholders, or controlling corporations.**
- (2) The character, qualifications, and experience of the officers and directors of the corporation.**
- (3) The future earnings prospects for the proposed corporation in the community in which the corporation will be located.**
- (4) The adequacy of the corporation's capital.**

If the department determines any of the factors described in subdivisions (1) through (4) unfavorably, the department may not issue a certificate authorizing the corporation to engage in business

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under this chapter. Certificates issued under this section must state whether the corporation is authorized to issue, negotiate, and sell certificates of investment or indebtedness, and, if not, must provide that the corporation may do business under this article only as restricted by section 21 of this chapter.

(c) Any company that is authorized to issue, negotiate, and sell certificates of investment or indebtedness and that holds a certificate to engage in business under this chapter is entitled to establish one (1) or more branches de novo and one (1) or more branches by acquisition in any location or locations within Indiana, at which any business of the company may be transacted to the same extent as at the principal office of the company.

(d) As a condition to the establishment and operation of a branch or branches under this section, the company must:

- (1) obtain prior written approval of the department;
- (2) operate each branch under the correct name of the company and its name must contain in addition the word "branch"; and
- (3) demonstrate that the applicant company will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the branch.

(e) The location of **the principal office** or any branch established under this section may be changed at any time when authorized by the board of directors of the company and approved by the department.

(f) Any company desiring to open or establish one (1) or more branches or change location of an existing branch **or the principal office** must file a written application therefor, in such form and containing such information as may be prescribed by the department. If the department determines that the requirements of subsection (d) have been satisfied, the department may in its discretion approve the application.

(g) A company is entitled to open or establish an automated teller facility in any location within Indiana or as permitted by the laws of the state in which the automated teller machine is to be located. An automated teller facility may be owned or operated individually by any company or jointly on a cost sharing or fee basis.

(h) A branch by acquisition may be established under this section only if done in compliance with applicable provisions of IC 28-1-7 or IC 28-1-8.

(i) A company that is authorized to issue, negotiate, and sell certificates of investment or indebtedness and that holds a certificate to engage in business under this chapter is entitled to establish one (1) or more branches de novo and one (1) or more

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branches by acquisition in any location outside Indiana. Any business of the company may be transacted at a branch established under this subsection to the same extent as at the principal office of the company, subject to IC 28-2-18-19.

SECTION 10. IC 28-6.1-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent (115%) of the face amount of the note covered are subject to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus, notwithstanding the collateral requirements of section ~~2~~ **5(b)** of this chapter.

(b) Loans and extensions of credit that arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller and that are secured by the cattle being sold, are subject to a limitation of twenty-five percent (25%) of the capital and surplus, notwithstanding the collateral requirements of section ~~2~~ **5(b)** of this chapter.

SECTION 11. IC 28-7-1-0.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 0.5. The following definitions apply throughout this chapter:

(1) "Automated teller machine" (ATM) means a piece of unmanned electronic or mechanical equipment that performs routine financial transactions for authorized individuals.

(2) "Branch office" means an office, agency, or other place of business at which deposits are received, share drafts are paid, or money is lent to members of a credit union. The term does not include:

- (A) the principal office of a credit union;
- (B) the principal office of a credit union affiliate;
- (C) a branch office of a credit union affiliate;
- (D) an automated teller machine; or
- (E) a night depository.

(3) "Credit union" is a cooperative, nonprofit association, incorporated under this chapter, for the purposes of educating its members in the concepts of thrift and to encourage savings among its members. A credit union should provide a source of credit at a fair and reasonable rate of interest and provide an opportunity for its members to use and control their own money in order to

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improve their economic and social condition.

(4) "Department" refers to the department of financial institutions.

(5) "Surplus" means the credit balance of undivided earnings after losses. The term does not include statutory reserves.

(6) "Unimpaired shares" means paid in shares less any losses for which no reserve exists and for which there is no charge against undivided earnings.

(7) "Related credit union service organization" means, in reference to a credit union, a credit union service organization in which the credit union has invested under section 9(4)(J) of this chapter.

(8) "Premises" means any office, branch office, suboffice, service center, parking lot, real estate, or other facility where the credit union transacts or will transact business.

(9) "Furniture, fixtures, and equipment" means office furnishings, office machines, computer hardware, computer software, automated terminals, and heating and cooling equipment.

(10) "Fixed assets" means:

(A) premises; and

(B) furniture, fixtures, and equipment.

(11) "Audit period" means a twelve (12) month period designated by the board of directors of a credit union.

(12) "Community" means:

(A) a second class city;

(B) a third class city;

(C) a town;

(D) a county other than a county containing a consolidated city;

(E) a census tract;

(F) a township; or

(G) any other municipal corporation (as defined in IC 36-1-2-10).

(13) "Control of a related interest" refers to a situation in which an individual directly or indirectly, or through or in concert with one (1) or more other individuals, possesses any of the following:

(A) The ownership of, control of, or power to vote at least twenty-five percent (25%) of any class of voting securities of the related interest.

(B) The control in any manner of the election of a majority of the directors of the related interest.

(C) The power to exercise a controlling influence over the

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management or policies of the related interest. For purposes of this clause, an individual is presumed to have control, including the power to exercise a controlling influence over the management or policies of a related interest, if the individual:

- (i) is an executive officer or a director of the related interest and directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest; or
- (ii) directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(14) "Executive officer" includes any of the following officers of a credit union:

- (A) The chairman of the board of directors.
- (B) The president.
- (C) A vice president.
- (D) The cashier.
- (E) The secretary.
- (F) The treasurer.

(15) "Immediate family" means the spouse of an individual, the individual's minor children, and any of the individual's children, including adults, residing in the individual's home.

(16) "Officer" means any individual who participates or has the authority to participate in major policymaking functions of a credit union, regardless of whether:

- (A) the individual has an official title;
- (B) the individual's title designates the individual as an assistant; or
- (C) the individual is serving without salary or other compensation.

(17) "Related interest", with respect to an individual, means:

- (A) a partnership, a corporation, or another business organization that is controlled by the individual; or
- (B) a political campaign committee:
 - (i) controlled by the individual; or
 - (ii) the funds or services of which benefit the individual.

(18) "Unimpaired capital and unimpaired surplus" means the sum of:

- (A) undivided profits;

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- (B) reserve for contingencies;**
- (C) regular reserve; and**
- (D) allowance for loan and lease losses.**

SECTION 12. IC 28-7-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. **(a)** The use of any name or title ~~which~~ **that** contains the words "credit union", **or that means "credit union" in any language**, is unlawful unless the name is used by:

- (1) a corporation authorized to use the words "credit union" under Indiana or United States law; or
- (2) the Indiana Credit Union League, Inc., and its affiliates.

(b) The department is authorized to exercise the powers under IC 28-11-4 against a person, firm, limited liability company, or corporation that improperly holds itself out as a credit union.

(c) A person, firm, limited liability company, or corporation that violates this section is subject to a penalty of five hundred dollars (\$500) per day for each day during which the violation continues. The penalty imposed shall be recovered in the name of the state on relation of the department and, when recovered, shall be paid into the financial institutions fund established by IC 28-11-2-9.

SECTION 13. IC 28-7-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. A credit union has the following powers:

- (1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

~~(2) To make loans to members or other credit unions. A loan to another credit union may not exceed twenty percent (20%) of the paid-in capital and surplus of the credit union making the loan.~~

~~(3)~~ **(2)** To make loans to officers, directors, or committee members ~~but only if:~~

~~(A) the loan complies with all requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;~~

~~(B) upon the making of the loan, the aggregate amount of loans outstanding under this subdivision will not exceed twenty percent (20%) of the unimpaired capital and surplus of the credit union;~~

~~(C) the loan is approved by the credit committee or loan officer; and~~

~~(D) the borrower takes no part in the consideration of or vote on the application.~~ **under section 17.1 of this chapter.**

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1 ~~(4)~~ (3) To invest in any of the following:

2 (A) Bonds, notes, or certificates that are the direct or indirect
3 obligations of the United States, or of the state, or the direct
4 obligations of a county, township, city, town, or other taxing
5 district or municipality or instrumentality of Indiana and that
6 are not in default.

7 (B) Bonds or debentures issued by the Federal Home Loan
8 Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners'
9 Loan Act (12 U.S.C. 1461 through 1468).

10 (C) Interest-bearing obligations of the FSLIC Resolution Fund
11 and obligations of national mortgage associations issued under
12 the authority of the National Housing Act.

13 (D) Mortgages on real estate situated in Indiana which are
14 fully insured under Title 2 of the National Housing Act (12
15 U.S.C. 1707 through 1715z).

16 (E) Obligations issued by farm credit banks and banks for
17 cooperatives under the Farm Credit Act of 1971 (12 U.S.C.
18 2001 through 2279aa-14).

19 (F) In savings and loan associations, other credit unions that
20 are insured under IC 28-7-1-31.5, and certificates of
21 indebtedness or investment of an industrial loan and
22 investment company if the association or company is federally
23 insured. Not more than twenty percent (20%) of the assets of
24 a credit union may be invested in the shares or certificates of
25 an association or company; nor more than forty percent (40%)
26 in all such associations and companies.

27 (G) Corporate credit unions.

28 (H) Federal funds or similar types of daily funds transactions
29 with other financial institutions.

30 (I) Mutual funds created and controlled by credit unions, credit
31 union associations, or their subsidiaries. Mutual funds referred
32 to in this clause may invest only in instruments that are
33 approved for credit union purchase under this chapter.

34 (J) Shares, stocks, or obligations of any credit union service
35 organization (as defined in Section 712 of the Rules and
36 Regulations of the National Credit Union Administration) with
37 the approval of the department. Not more than five percent
38 (5%) of the total paid in and unimpaired capital of the credit
39 union may be invested under this clause.

40 ~~(5)~~ (4) To deposit its funds into:

41 (A) depository institutions that are federally insured; or

42 (B) state chartered credit unions that are privately insured by

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an insurer approved by the department.

~~(6)~~ (5) To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.

~~(7)~~ (6) To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.

~~(8)~~ (7) To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.

~~(9)~~ (8) To charge the member's share account for the actual cost of necessary locator service when the member has failed to keep the credit union informed about the member's current address. The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not more than once in any twelve (12) month period.

~~(10)~~ (9) To transfer to an accounts payable, a dormant account, or a special account share accounts which have been inactive, except for dividend credits, for a period of two (2) years. The credit union shall not consider the payment of dividends on the transferred account.

~~(11)~~ (10) To invest in fixed assets with the funds of the credit union. An investment in fixed assets in excess of five percent (5%) of its assets is subject to the approval of the department.

~~(12)~~ (11) To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the principal office.

~~(13)~~ (12) To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

~~(14)~~ (13) To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

(A) the coverage is placed with an insurance company licensed to do business in Indiana; and

(B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or

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- 1 purchase of the coverage.
- 2 ~~(15)~~ **(14)** To sell and cash negotiable checks, travelers checks,
- 3 and money orders for members.
- 4 ~~(16)~~ **(15)** To purchase members' notes from any liquidating credit
- 5 union, with written approval from the department, at prices agreed
- 6 upon by the boards of directors of both the liquidating and the
- 7 purchasing credit unions. However, the aggregate of the unpaid
- 8 balances of all notes of liquidating credit unions purchased by any
- 9 one (1) credit union shall not exceed ten percent (10%) of its
- 10 unimpaired capital and surplus unless special written
- 11 authorization has been granted by the department.
- 12 ~~(17)~~ **(16)** To exercise such incidental powers necessary or
- 13 requisite to enable it to carry on effectively the business for which
- 14 it is incorporated.
- 15 ~~(18)~~ **(17)** To act as a custodian or trustee of any trust created or
- 16 organized in the United States and forming part of a ~~stock bonus,~~
- 17 ~~pension, or profit sharing tax advantaged savings~~ plan which
- 18 qualifies or qualified for specific tax treatment under Section
- 19 ~~408(a) or 223, Section~~ 401(d), **408, 408A, or 530** of the Internal
- 20 Revenue Code, if the funds of the trust are invested only in share
- 21 accounts or insured certificates of the credit union.
- 22 ~~(19)~~ **(18)** To issue shares of its capital stock or insured certificates
- 23 to a trustee or custodian of a pension plan, profit sharing plan, or
- 24 stock bonus plan which qualifies for specific tax treatment under
- 25 Sections 401(d) or 408(a) of the Internal Revenue Code.
- 26 ~~(20)~~ **(19)** A credit union may exercise any rights and privileges
- 27 that are:
- 28 (A) granted to federal credit unions; but
- 29 (B) not authorized for credit unions under the Indiana Code
- 30 (except for this section) or any rule adopted under the Indiana
- 31 Code;
- 32 if the credit union complies with section 9.2 of this chapter.
- 33 ~~(21)~~ **(20)** To sell, pledge, or discount any of its assets. However,
- 34 a credit union may not pledge any of its assets as security for the
- 35 safekeeping and prompt payment of any money deposited, except
- 36 that a credit union may, for the safekeeping and prompt payment
- 37 of money deposited, give security as authorized by federal law.
- 38 ~~(22)~~ **(21)** To purchase assets of another credit union and to
- 39 assume the liabilities of the selling credit union.
- 40 ~~(23)~~ **(22)** To act as a fiscal agent of the United States and to
- 41 receive deposits from nonmember units of the federal, state, or
- 42 county governments, from political subdivisions, and from other

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credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed twenty percent (20%) of the total assets of that credit union, excluding those public funds.

~~(24)~~ **(23)** To join the National Credit Union Administration Central Liquidity Facility.

~~(25)~~ **(24)** To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

~~(26)~~ **(25)** To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

~~(27)~~ **(26)** To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

~~(28)~~ **(27)** Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional obligations as may be incident to becoming an owner or lessor of

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such property.

SECTION 14. IC 28-7-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. Each credit union shall make a call report of its condition to the department, at least ~~semiannually, on or before January 31 and July 31 of each year,~~ **quarterly** on forms approved by the director. Reports in addition to the regular reports may be required. A credit union that fails to comply with this section may be required by the department to pay a civil penalty of one hundred dollars (\$100) for each day of noncompliance. Money paid under this section as determined by the department shall be deposited into the financial institutions fund established by IC 28-11-2-9. Except as specified in IC 28-11-3-3 concerning individual depositors, any information contained in call reports made by credit unions to the department must be made available to any person upon request.

SECTION 15. IC 28-7-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) Not more than thirty (30) business days after the conclusion of the annual meeting, the board of directors shall elect from its own members:

- (1) a chairperson;
- (2) a vice chairperson or vice chairpersons;
- (3) a secretary; and
- (4) a treasurer.

(b) The board may appoint officers of the credit union.

(c) The office of secretary and treasurer may be held by the same person. The board may appoint:

- (1) an assistant secretary;
- (2) an assistant treasurer; or
- (3) both an assistant secretary and an assistant treasurer.

(d) The board of directors shall have the general management of the affairs, funds, and records of the credit union and shall meet at least monthly.

(e) The board may appoint an executive committee to exercise authority delegated to it by the board. All actions taken by the executive committee shall be subject to ratification by the board.

(f) Unless the bylaws provide otherwise, it is the duty of the directors to do the following:

- (1) To act upon all applications for membership unless the board has appointed a membership officer. The board shall receive the report of the membership officer monthly and shall act upon all those applications for membership not approved by the membership officer.

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(2) To determine rates of interest on loans.

(3) To determine:

(A) the maximum number of shares which may be held by a member; and

(B) the maximum amount which may be loaned to a member.

(4) To declare dividends.

(5) To amend the bylaws, provided that the qualifications for membership in the credit union are principally defined in the articles of incorporation.

(6) To fill vacancies on the board and the credit committee until the next election.

(7) To invest the funds of the credit union or to delegate the authority for investments to an executive committee or manager. However, the board of directors shall review all investments made by the executive committee or manager at least monthly.

(8) To set the compensation of members of the board, credit committee, or supervisory committee.

(9) To establish and annually review written lending policies and maintain the policies on file in the credit union.

(g) The board may appoint loan officers. Each loan officer shall furnish to the credit committee or to the board a record of each loan approved or denied at its next meeting. A loan officer, including the treasurer or assistant treasurer, shall not have authority to disburse funds of the credit union for any loan which has been approved by the loan officer. Not more than one (1) member of the credit committee may be appointed as loan officer.

SECTION 16. IC 28-7-1-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) Every loan application shall be submitted on a form approved by the board of directors. When making an application, a member shall state the security offered. Loans may be dispersed upon written approval by a majority of the credit committee or a loan officer. If the credit committee or loan officer fails to approve an application for a loan, the applicant may appeal to the board of directors, providing such appeal is authorized by the bylaws.

(b) Loans to members may be made only under the following terms and conditions:

(1) All loans shall be evidenced by notes signed by the borrowing member. ~~A loan shall not be made to a member if it would cause the member to become indebted to the credit union in an aggregate amount in excess of ten percent (10%) of the total unimpaired shares and surplus.~~

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1 ~~(2)~~ Unsecured loans shall not exceed five percent (5%) of the
 2 current assets of the credit union. The board of directors shall
 3 establish written lending policies and maintain such policies on
 4 file in the credit union. For the purposes of this section, an
 5 assignment of shares or the endorsement of a note is considered
 6 security.

7 ~~(3)~~ **(2)** Except as otherwise provided in this section, the terms of
 8 any loan to a member with a maturity of more than six (6) months
 9 shall provide for principal and interest payments that will
 10 amortize the obligation in full within the terms of the loan
 11 contract. If the income of the borrowing member is seasonal, the
 12 terms of the loan contract may provide for seasonal amortization.

13 ~~(4)~~ **(3)** Loans may be made upon the security of improved or
 14 unimproved real estate. Except as otherwise specified in this
 15 section, such loans must be secured by a first lien upon real estate
 16 prior to all other liens, except for taxes and assessments not
 17 delinquent, and may be made with repayment terms other than as
 18 provided in subdivision ~~(3)~~: **(2)**. When the amount of a loan is at
 19 least two hundred fifty thousand dollars (\$250,000), the fair cash
 20 value of real estate security shall be determined by a written
 21 appraisal made by one (1) or more qualified state licensed or
 22 certified appraisers designated by the board of directors. The
 23 credit union loan folder for real estate mortgage loans shall
 24 include, when applicable:

- 25 (A) the loan application;
- 26 (B) the mortgage instrument;
- 27 (C) the note;
- 28 (D) the disclosure statement;
- 29 (E) the documentations of property insurance;
- 30 (F) an appraisal on the real estate for which the loan is made;
- 31 and
- 32 (G) the attorney's opinion of titles or a certificate of title
- 33 insurance on the real estate upon which the mortgage loan is
- 34 made.

35 ~~(5)~~ **(4)** The total unpaid balance of all loans authorized by this
 36 subdivision shall, at no time, exceed thirty-three and one-third
 37 percent (33 1/3%) of the total assets of the credit union at the time
 38 the loans are granted. This section does not limit unpaid balances
 39 secured by adjustable rate mortgages or loans with a remaining
 40 maturity of five (5) years or less. Loans made upon security of
 41 real estate are subject to the following restrictions:

- 42 (A) Real estate loans in which no principal amortization is

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required shall provide for the payment of interest at least annually and shall mature within five (5) years of the date of the loan unless extended and shall not exceed fifty percent (50%) of the fair cash value of the real estate used as security.

(B) Real estate loans on improved real estate, except for variable rate mortgage loans and rollover mortgage loans provided for in subdivision ~~(6)~~, **(5)**, shall require substantially equal payments at successive intervals of not more than one (1) year, shall mature within thirty (30) years, and shall not exceed ninety percent (90%) of the fair cash value of the real estate used as security, unless the excess of any loan over the authorized percentage of fair cash value is guaranteed or insured by a government agency or a private insurer authorized to engage in such business in Indiana.

(C) Real estate loans on unimproved real estate may be made. The terms of the loan shall:

- (i) require substantially equal payments of interest and principal at successive intervals of one (1) year or less;
- (ii) mature within ten (10) years; and
- (iii) not exceed eighty-five percent (85%) of the fair cash value of the real estate used as security.

(D) Loans primarily secured by a mortgage which constitutes a second lien on improved real estate may be made only if the aggregate amount of all loans on the real estate does not exceed one hundred percent (100%) of the fair cash value of the real estate after such loan is made. Repayment terms shall be in accordance with subdivision ~~(3)~~, **(2)**.

(E) Real estate loans may be made for the construction of improvements to real property. Funds borrowed may be advanced as work on the improvements progresses.

Repayment terms must comply with subdivision ~~(3)~~, **(2)**.

~~(6)~~ **(5)** Subject to the limitations of subdivision ~~(4)~~, **(3)**, variable rate mortgage loans and rollover mortgage loans may be made under the same limitations and rights provided state chartered savings associations under IC 28-1-21.5 (before its repeal) or IC 28-15 or federal credit unions.

~~(7)~~ **(6)** A credit union may participate with other financial institutions in making loans to credit union members and may sell a participating interest in any of its loans. However, the credit union may not sell more than ninety percent (90%) of the principal of participating loans outstanding at the time of sale.

(7) Notwithstanding subdivisions (1) through (6), a credit

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union may make any of the following:

(A) Any loan that may be made by a federal credit union.

However, IC 24-4.5 applies to any loan that is:

(i) made under this clause; and

(ii) within the scope of IC 24-4.5.

Any provision of federal law that is in conflict with IC 24-4.5 does not apply to a loan made under this clause.

(B) Subject to subdivision (3), any alternative mortgage loan (as defined in IC 28-15-11-2) that may be made by a savings association (as defined in IC 28-15-1-11) under IC 28-15-11. A loan made under this clause by a credit union is subject to the same terms, conditions, exceptions, and limitations that apply to an alternative mortgage loan made by a savings association under IC 28-15-11.

(8) A credit union may make a loan under either:

(i) subdivisions (2) through (6); or

(ii) subdivision (7);

but not both. A credit union shall make an initial determination as to whether to make a loan under subdivisions (2) through (6) or under subdivision (7). If the credit union determines that a loan or category of loans is to be made under subdivision (7), the written loan policies of the credit union must include that determination. A credit union may not combine the terms and conditions that apply to a loan made under subdivisions (2) through (6) with the terms and conditions that apply to a loan made under subdivision (7) to make a loan not expressly described and authorized either under subdivisions (2) through (6) or under subdivision (7).

(c) Nothing in this section prevents any credit union from taking an indemnifying or second mortgage on real estate as additional security.

SECTION 17. IC 28-7-1-17.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 17.1. (a) Subject to subsection (b), a credit union may make a loan to the credit union's individual officers, directors, and committee members under the following terms and conditions:**

(1) The loan must comply with all requirements under this chapter that apply to loans made to other borrowers.

(2) The loan may not be on terms more favorable than those extended to other borrowers.

(3) The borrower may not:

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(A) take part in the consideration of; or

(B) vote on;

the borrower's loan application.

(4) Except as provided in subsection (b), a credit union may not make a loan under this section to an individual, the individual's immediate family, or the individual's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the individual, the individual's immediate family, or the individual's related interests, exceeds the greater of:

(A) five percent (5%) of the credit union's unimpaired capital and surplus; or

(B) twenty-five thousand dollars (\$25,000);

unless the loan is first approved by the credit union's board of directors.

(5) A credit union may not make a loan under this section to an individual, the individual's immediate family, or the individual's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the individual, the individual's immediate family, or the individual's related interests, exceeds the lending limits set forth in IC 28-7-1-39.

(6) Subject to subsection (b), the total amount of all loans made under this section may not exceed the credit union's unimpaired capital and surplus.

(b) The limits set forth in subsections (a)(4) and (a)(6) do not apply to any of the following:

(1) An extension of credit made under a line of credit approved under subsection (a)(4) if the extension of credit is made not later than fourteen (14) months after the line of credit was approved.

(2) A loan, in any amount, to finance the education of an individual's child.

(3) A loan, in any amount, to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the individual, if:

(A) the loan is secured by a first lien on the residence and the residence is owned, or will be owned after the loan is made, by the individual; and

(B) in the case of a refinancing, the loan includes only the amount used to repay the original loan, plus any closing costs and any additional amount used for any purpose

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described in this subdivision.

(4) A loan, in any amount, secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States.

(5) A loan, in any amount, secured by a perfected security interest in a segregated deposit account in the lending credit union.

(6) A loan made to an individual, the individual's immediate family, or the individual's related interests, for any other purpose, if the total amount of loans to the individual, the individual's immediate family, or the individual's related interests under this section does not exceed, at any given time, the greater of:

(A) two and one-half percent (2.5%) of the credit union's unimpaired capital and unimpaired surplus; or

(B) twenty-five thousand dollars (\$25,000); but in no event more than one hundred thousand dollars (\$100,000).

(c) At least quarterly, the president or manager shall prepare and deliver to the board of directors a report listing the outstanding indebtedness of all officers, directors, and committee members. A report prepared under this subsection must be retained at the credit union for three (3) years and shall not be filed with the department unless specifically requested. A report required by this subsection must include:

(1) the amount of each indebtedness; and

(2) a description of the terms and conditions of each loan, including:

(A) the interest rate;

(B) the original amount and date of the loan;

(C) the maturity date;

(D) payment terms;

(E) security, if any; and

(F) any unusual term or condition of a particular extension of credit.

(d) The department may apply the provisions of 12 CFR 215 (Regulation O) in applying and administering this section.

SECTION 18. IC 28-7-1-39 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 39. (a) As used in this section, "loans and extensions of credit" includes all direct or indirect advances of funds made to

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1 a member on the basis of:

2 (1) an obligation of the member to repay the funds; or

3 (2) a pledge of specific property by or on behalf of the
4 member and from which the funds advanced are repayable.

5 The term includes any contractual liability of a credit union to
6 advance funds to or on behalf of a member, to the extent specified
7 by the department.

8 (b) As used in this section, "member" includes an individual, a
9 sole proprietorship, a partnership, a joint venture, an association,
10 a trust, an estate, a business trust, a limited liability company, a
11 corporation, a sovereign government, or an agency,
12 instrumentality, or political subdivision of a sovereign government,
13 or any similar entity or organization.

14 (c) Except as provided in subsection (e), the total loans and
15 extensions of credit by a credit union to a member outstanding at
16 any given time and not fully secured, as determined in a manner
17 consistent with subsection (d), by collateral with a market value at
18 least equal to the amount of the loan or extension of credit may not
19 exceed fifteen percent (15%) of the unimpaired capital and
20 unimpaired surplus of the credit union.

21 (d) Except as provided in subsection (e), the total loans and
22 extensions of credit by a credit union to a member outstanding at
23 any given time and fully secured by readily marketable collateral
24 having a market value, as determined by reliable and continuously
25 available price quotations, at least equal to the amount of funds
26 outstanding may not exceed ten percent (10%) of the unimpaired
27 capital and unimpaired surplus of the credit union. The limitation
28 in this subsection is separate from and in addition to the limitation
29 set forth in subsection (c).

30 (e) The limitations set forth in subsections (c) and (d) are subject
31 to the following exceptions:

32 (1) Loans or extensions of credit arising from the discount of
33 commercial or business paper evidencing an obligation to the
34 member negotiating it with recourse are not subject to any
35 limitation based on capital and surplus.

36 (2) The purchase of bankers' acceptances of the kind
37 described in 12 U.S.C. 372 and issued by a financial institution
38 organized or reorganized under the laws of Indiana or any
39 other state or the United States are not subject to any
40 limitation based on capital and surplus.

41 (3) Loans or extensions of credit secured by bills of lading,
42 warehouse receipts, or similar documents transferring or

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securing title to readily marketable staples are subject to a limitation of thirty-five percent (35%) of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent (115%) of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by any other obligation fully guaranteed as to principal and interest by the United States are not subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitment or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending credit union are not subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any credit union, when the loans or extensions of credit are approved by the director of the department, are not subject to any limitation based on capital and surplus.

(8) Loans or extensions of credit to the Student Loan Marketing Association are not subject to any limitation based on capital and surplus.

(f) Loans or extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee by the member transferring the paper is subject under this section to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus, notwithstanding the collateral requirements set forth in subsection (d).

(g) If the credit union's files or the knowledge of the credit union's officers of the financial condition of each maker of consumer paper described in subsection (f) is reasonably adequate, and an officer of the credit union designated for that purpose by the board of directors of the credit union certifies in writing that the credit union is relying primarily upon the responsibility of each

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1 maker for payment of the loans or extensions of credit and not
 2 upon any full or partial recourse endorsement or guarantee by the
 3 transferor, the limitations of this section as to the loans or
 4 extensions of credit of each maker shall be the sole applicable loan
 5 limitations.

6 (h) Loans or extensions of credit secured by shipping documents
 7 or instruments transferring or securing title covering livestock or
 8 giving a lien on livestock when the market value of the livestock
 9 securing the obligation is not at any time less than one hundred
 10 fifteen percent (115%) of the face amount of the note covered are
 11 subject under this section, notwithstanding the collateral
 12 requirements set forth in subsection (d), to a maximum limitation
 13 equal to twenty-five percent (25%) of the capital and surplus.

14 (i) Loans or extensions of credit that arise from the discount by
 15 dealers in dairy cattle of paper given in payment for dairy cattle,
 16 which paper carries a full recourse endorsement or unconditional
 17 guarantee of the seller and that are secured by the cattle being sold,
 18 are subject under this section, notwithstanding the collateral
 19 requirements set forth in subsection (d), to a limitation of
 20 twenty-five percent (25%) of the capital and surplus.

21 (j) Except as otherwise provided, an officer, director, employee,
 22 or attorney of a credit union who stipulates for, receives, or
 23 consents or agrees to receive, any fee, commission, gift, or thing of
 24 value, from any person, for the purpose of procuring or
 25 endeavoring to procure for any member any loan from or the
 26 purchase or discount of any paper, note, draft, check, or bill of
 27 exchange by the credit union, commits a Class A misdemeanor.

28 (k) Except as otherwise provided in this chapter, any credit
 29 union that holds obligations of indebtedness in violation of the
 30 limitations prescribed in this section shall, not later than July 1,
 31 2006, cause the amount of the obligations to conform to the
 32 limitations prescribed by this chapter and by the provisions of this
 33 section. The department may, in its discretion, extend the time for
 34 effecting this conformity, in individual instances, if the interests of
 35 the depositors will be protected and served by an extension. Upon
 36 the failure of a credit union to comply with the limitations, in
 37 accordance with this section or in accordance with any order of the
 38 department concerning the limitations, the department may
 39 declare that the credit union is conducting its business in an
 40 unauthorized or unsafe manner and proceed in accordance with
 41 IC 28-1-3.1-2.

42 (l) The department may apply the provisions of 12 CFR 32 in

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1 **the application and administration of this chapter.**

2 SECTION 19. IC 28-10-1-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. A reference to
4 a federal law or federal regulation in IC 28 is a reference to the law or
5 regulation in effect January 1, ~~2004~~ 2005.

6 SECTION 20. IC 28-11-2-3 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. The director, on
8 behalf of the department, shall employ qualified individuals as
9 assistants, deputies, supervisors, and other necessary employees. The
10 technical or professional qualification of an applicant shall be
11 determined by examination, by professional rating, or as the director
12 determines. **The director may retain the services of a qualified**
13 **independent contractor to assist the department in the examination**
14 **process under this article. Contracts executed under this section**
15 **must comply with state contracting laws and the contracting**
16 **policies and procedures of the Indiana department of**
17 **administration.**

18 SECTION 21. IC 28-11-3-6 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) As used in this
20 section:

21 (1) "federally chartered" means an entity organized or reorganized
22 under the law of the United States; and

23 (2) "state chartered" means an entity organized or reorganized
24 under the law of Indiana or another state.

25 (b) If the department determines that federal law has preempted a
26 provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the provision of
27 IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state chartered entity
28 only to the same extent that the department determines the provision is
29 applicable to the:

30 (1) same; or

31 (2) functionally equivalent;

32 type of federally chartered entity.

33 (c) A state chartered entity seeking an exemption from a provision
34 of IC 24, IC 26, IC 28, IC 29, or IC 30 based on the preemption of the
35 provision as applied to a federally chartered entity shall submit a letter
36 to the department:

37 (1) describing in detail; and

38 (2) documenting the federal preemption of;

39 the provisions from which it seeks exemption. If available, copies of
40 relevant federal law, regulations, and interpretive letters must be
41 attached to the letter submitted by the requesting entity.

42 (d) The department shall notify the requesting entity ~~within~~ **of the**

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department's receipt of the request not later than ten (10) business days after the department's receipt of a letter described in subsection (c). Except as provided in subsection (e), upon receipt of the notification, the requesting entity may operate as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 for ninety (90) days after the date on which the department receives the letter, unless otherwise notified by the department. This period may be extended **for an additional ninety (90) days** if the department determines that the requesting entity's letter raises issues requiring additional information or additional time for analysis. If the department extends the period **for the department's review of the request**, the requesting entity may operate as if the requesting entity is exempt from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 **during the extended period of review** only if the requesting entity receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested exemption; or

(B) convene a hearing;

not later than ninety (90) days after the department receives the requesting entity's letter, **unless the department has extended the period for the department's review under this subsection;** and

(2) if a hearing is convened, the department must approve or deny the requested exemption not later than ninety (90) days after the hearing is concluded.

(e) The department may refuse to exempt a requesting entity from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 if the department finds that any of the following conditions apply:

(1) The department determines that a described provision of IC 24, IC 26, IC 28, IC 29, or IC 30 is not preempted for a federally chartered entity of the:

(A) same; or

(B) functionally equivalent;

type.

(2) The extension of the federal preemption in the form of an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 to the requesting entity would:

(A) adversely affect the safety and soundness of the requesting entity; or

(B) result in an unacceptable curtailment of consumer protection provisions.

(3) The failure of the department to provide for the exemption

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from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will not result in a competitive disadvantage to the requesting entity.

(f) The operation of a financial institution in a manner consistent with exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 under this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a financial institution is exempted from the provisions of IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this section, the department shall do the following:

(1) Determine whether the exemption shall apply to all financial institutions that, in the opinion of the department, possess a charter that is:

(A) the same as; or

(B) functionally the equivalent of; the charter of the exempt institution.

(2) For purposes of the determination required under subdivision (1), ensure that applying the exemption to the financial institutions described in subdivision (1) will not:

(A) adversely affect the safety and soundness of the financial institutions; or

(B) unduly constrain Indiana consumer protection provisions.

(3) Issue an order published in the Indiana Register that specifies whether the exemption applies to the financial institutions described in subdivision (1).

(h) If the department denies the request of a financial institution under this section for exemption from Indiana Code provisions that are preempted for federally chartered institutions, the requesting institution may appeal the decision of the department to the circuit court of the county in which the principal office of the requesting institution is located.

(i) If the department determines that federal law has preempted a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 as the provision applies to an operating subsidiary of a federally chartered entity, the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a qualifying subsidiary (as defined in IC 28-13-16-1) of a state chartered entity only to the same extent that the department determines the provision applies to the operating subsidiary of:

(1) the same; or

(2) the functionally equivalent;

type of federally chartered entity. In determining whether to extend the exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 to a qualifying subsidiary (as defined in

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1 **IC 28-13-16-1) of a state chartered entity under this subsection, the**
 2 **department shall use the procedures and undertake the**
 3 **considerations described in this section for a preemption**
 4 **determination with respect to a state chartered entity.**

5 SECTION 22. IC 28-11-4-2 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. If the director has
 7 reasonable cause to believe that a financial institution:

8 (1) has engaged, is engaging, or will engage in an unsafe or
 9 unsound practice in conducting the business of the financial
 10 institution; or

11 (2) has violated, is violating, or will violate a:

12 (A) statute;

13 (B) rule;

14 (C) condition imposed in writing by the director in connection
 15 with the granting of an application or other request by the
 16 financial institution; or

17 (D) written agreement entered into with the department;

18 the director may issue and serve upon the financial institution a notice
 19 of charges of the practice or violation. **The department may, when**
 20 **appropriate, exercise enforcement powers under this chapter**
 21 **jointly with a financial institution's primary federal regulator.**

22 SECTION 23. IC 28-11-4-5 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. If the **director of the**
 24 department enters into a consent to a final order under section 7 of this
 25 chapter with a financial institution, director, officer, or employee, the
 26 director is not required to issue and serve a notice of charges upon the
 27 financial institution, director, or officer under section 2 or 3 of this
 28 chapter. A consent agreement may be negotiated and entered into
 29 before or after the issuance of a notice of charges.

30 SECTION 24. IC 28-12-2-1 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The articles of
 32 incorporation must set forth the following:

33 (1) A corporate name for the corporation that satisfies the
 34 requirements of IC 28-12-3.

35 (2) The number of shares the corporation is authorized to issue.

36 (3) The street address of the corporation's principal office in
 37 Indiana.

38 (4) The name and address of each incorporator, unless the articles
 39 of incorporation are articles of conversion **or articles of**
 40 **restatement under IC 28-13-14-14.**

41 (5) The amount of capital with which the corporation will begin
 42 business.

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(6) The names and addresses of the individuals who are to serve as the initial directors.

(7) The maximum number of directors.

(8) The purpose or purposes for which the corporation is organized.

(9) The effective date of the articles of incorporation.

SECTION 25. IC 28-13-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the board of directors may fill the vacancy; or

(2) if the directors remaining in office constitute fewer than a quorum of the board, the directors may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under section 7(b) of this chapter or otherwise may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

(d) If a vacancy is not filled through a corporation's normal process for filling vacancies within a time considered reasonable by the department, the director of the department may make a temporary appointment to the board of directors to fill the vacancy. The director of the department shall appoint a person whom the director considers capable of providing competent leadership and decision making ability. A person appointed to a board of directors under this subsection shall serve on the board until the corporation fills the position through the corporation's normal process for filling vacancies on the board. However, a person appointed to a board of directors by the director of the department under this subsection may not serve on the board for more than two (2) years, unless the person is selected to fill the vacancy through the corporation's normal process for filling vacancies. For purposes of this subsection, in determining whether a corporation has had a reasonable period in which to fill a vacancy, the department shall consider the following:

(1) The financial condition of the corporation.

(2) The number of remaining board members.

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(3) The potential harm to the corporation that could result without an appointment under this subsection.

SECTION 26. IC 28-13-14-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) A corporation's board of directors or, if the board of directors has not been selected, the incorporators may restate the corporation's articles of incorporation at any time with or without shareholder action.

(b) The restatement may include at least one (1) amendment to the articles. If the restatement includes an amendment requiring shareholder approval, the amendment must be adopted as provided in sections 3 through 7 of this chapter.

(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 28-13-5-8. The notice must also do the following:

(1) State that the purpose or one (1) of the purposes of the meeting is to consider the proposed restatement.

(2) Contain or be accompanied by a copy of the restatement that identifies any amendment or other change the corporation would make in the articles.

(d) A corporation restating the corporation's articles of incorporation shall prepare articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(1) whether the restatement contains an amendment to the articles requiring shareholder approval and, if the restatement does not, that the board of directors adopted the restatement; or

(2) if the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 10 of this chapter.

Notwithstanding IC 28-12-2-1(4), the corporation is not required to include in the articles of restatement the name and address of each incorporator.

(e) The following do not constitute an amendment to a corporation's articles of incorporation:

(1) A reordering or renumbering of the articles or sections of the articles.

(2) The correction of grammatical or spelling errors.

SECTION 27. IC 30-2-16 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 16. Payroll Savings Plan Administration



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1 Sec. 1. As used in this chapter, "participant" means an
2 individual who has accumulated a balance of funds with a payroll
3 savings plan administrator through a payroll savings plan.

4 Sec. 2. As used in this chapter, "payroll savings plan" means a
5 method provided by an employer to the employer's employees for
6 the voluntary purchase of United States savings bonds on a regular
7 schedule through the designation of an amount to be deducted each
8 pay period until a sufficient amount accumulates to pay the
9 purchase price of at least one (1) United States savings bond.

10 Sec. 3. As used in this chapter, "payroll savings plan
11 administrator" means an organization that:

12 (1) has been qualified by the Federal Reserve Bank or the
13 Bureau of the Public Debt under 31 CFR Part 317 to sell
14 United States savings bonds; and

15 (2) operates payroll savings plans on behalf of employers for
16 the purchase of United States savings bonds.

17 Sec. 4. As used in this chapter, "static balance" means an
18 amount held by a payroll savings plan administrator for a
19 participant who:

20 (1) is not making allotments of payroll deductions to the
21 payroll savings plan administrator; but

22 (2) has not terminated the individual's directions to the
23 participant's employer or the employer's payroll savings plan
24 administrator to purchase United States savings bonds for the
25 individual when a sufficient balance accumulates to pay the
26 purchase price.

27 Sec. 5. Subject to this chapter, a payroll savings plan
28 administrator is entitled to reimbursement from a static balance
29 for reasonable expenses incurred in the performance of static
30 balance administration services beginning with the year after the
31 participant ceases to make allotments of payroll deductions to the
32 payroll savings plan administrator.

33 Sec. 6. Section 5 of this chapter applies only to an account in
34 which the static balance does not exceed fifty dollars (\$50).

35 Sec. 7. Section 5 of this chapter does not apply to accounts
36 containing a static balance that would otherwise be reported to the
37 state under IC 32-34-1-26 as Indiana property.

38 Sec. 8. The maximum charge that may be imposed on an
39 account with a static balance is one dollar (\$1) per month.

40 SECTION 28. IC 32-17-9-6 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. As used in this
42 chapter, "security account" means:

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(1) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(2) an investment management account or custody account with a corporate fiduciary or with a bank, savings bank, or savings association with trust powers, including securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or

~~(2)~~ **(3) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, regardless of whether the cash was credited to the account before the owner's death.**

SECTION 29. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "department" refers to the department of financial institutions established by IC 28-11-1-1.**

(b) The department shall, in consultation with appropriate industry associations and other interested parties, consider appropriate language for proposed legislation intended to modernize IC 28 to incorporate provisions concerning emerging technology and electronic banking.

(c) Not later than November 1, 2005, the department shall submit to the general assembly a report that:

(1) includes recommendations for proposed legislation concerning electronic banking in Indiana; and

(2) is based on the department's consultations under subsection (b).

A report submitted under this subsection must be in an electronic format under IC 5-14-6.

(d) This SECTION expires January 1, 2006.

SECTION 30. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1179, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1179 as introduced.)

BURTON, Chair

Committee Vote: yeas 9, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1179, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 4. IC 24-9-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. "Home loan" means a loan, other than an open end credit plan, ~~or~~ a reverse mortgage transaction, **or a loan described in IC 24-9-1-1**, that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:

- (1) designed primarily for occupancy of one (1) to four (4) families; and
- (2) that is or will be occupied by a borrower as the borrower's principal dwelling.

SECTION 5. IC 24-9-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. A person may not:

- (1) divide a loan transaction into separate parts with the intent of evading a provision of this article;
- (2) structure a home loan transaction as an open-end loan with the

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intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or

(3) engage in a deceptive act in connection with a:

(A) home loan; or

(B) loan described in IC 24-9-1-1.

SECTION 6. IC 24-9-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A person who purchases or is otherwise assigned a high cost home loan is subject to all affirmative claims and any defenses, **except for an affirmative claim or defense pursuant to IC 24-9-3-7**, with respect to the high cost home loan that the borrower could assert against a creditor or broker of the high cost home loan. However, this section does not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan. A purchaser or an assignee is presumed to have exercised reasonable due diligence if the purchaser or assignee:

(1) has in place at the time of the purchase or assignment of the subject loans, policies that expressly prohibit the purchase or acceptance of the assignment of any high cost home loans;

(2) requires by contract that a seller or an assignor of home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either:

(A) the seller or assignor will not sell or reassign any high cost home loans to the purchaser or assignee; or

(B) the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect;

(3) exercises reasonable due diligence:

(A) at the time of purchase or assignment of home loans; or

(B) within a reasonable period after the purchase or assignment of home loans;

intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high cost home loans; or

(4) satisfies the requirements of subdivisions (1) and (2) and establishes that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan based on the:

(A) documentation required by the federal Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(B) itemization of the amount financed and other disbursement

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disclosures.

(b) A borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of a high cost home loan:

(1) a violation of IC 24-9-4-2 as a defense, claim, or counterclaim, after:

(A) an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan is initiated;

(B) an action to collect on the loan or foreclose on the collateral securing the loan is initiated; or

(C) the loan is more than sixty (60) days in default; within three (3) years after the closing of a home loan;

(2) a violation of this article in connection to the high cost home loan as a defense, claim, or counterclaim in an original action within five (5) years after the closing of a high cost home loan; and

(3) any defense, claim, counterclaim, or action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan, including a violation of this article after:

(A) an action to collect on the loan or foreclose on the collateral securing the loan is initiated;

(B) the debt arising from the loan is accelerated; or

(C) the loan is more than sixty (60) days in default; at any time during the term of a high cost home loan.

(c) In an action, a claim, or a counterclaim brought under subsection (b), the borrower may recover only amounts required to reduce or extinguish the borrower's liability under a home loan plus amounts required to recover costs, including reasonable attorney's fees.

(d) The provisions of this section are effective notwithstanding any other provision of law. This section shall not be construed to limit the substantive rights, remedies, or procedural rights available to a borrower against any creditor, assignee, or holder under any other law. The rights conferred on borrowers by subsections (a) and (b) are independent of each other and do not limit each other."

Page 3, line 28, delete ",".

Page 3, line 32, delete ",".

Page 20, line 40, after "of" insert "a".

Page 29, between lines 30 and 31, begin a new paragraph and insert:
"SECTION 27. IC 30-2-16 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 16. Payroll Savings Plan Administration

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Sec. 1. As used in this chapter, "participant" means an individual who has accumulated a balance of funds with a payroll savings plan administrator through a payroll savings plan.

Sec. 2. As used in this chapter, "payroll savings plan" means a method provided by an employer to the employer's employees for the voluntary purchase of United States savings bonds on a regular schedule through the designation of an amount to be deducted each pay period until a sufficient amount accumulates to pay the purchase price of at least one (1) United States savings bond.

Sec. 3. As used in this chapter, "payroll savings plan administrator" means an organization that:

- (1) has been qualified by the Federal Reserve Bank or the Bureau of the Public Debt under 31 CFR Part 317 to sell United States savings bonds; and
- (2) operates payroll savings plans on behalf of employers for the purchase of United States savings bonds.

Sec. 4. As used in this chapter, "static balance" means an amount held by a payroll savings plan administrator for a participant who:

- (1) is not making allotments of payroll deductions to the payroll savings plan administrator; but
- (2) has not terminated the individual's directions to the participant's employer or the employer's payroll savings plan administrator to purchase United States savings bonds for the individual when a sufficient balance accumulates to pay the purchase price.

Sec. 5. Subject to this chapter, a payroll savings plan administrator is entitled to reimbursement from a static balance for reasonable expenses incurred in the performance of static balance administration services beginning with the year after the participant ceases to make allotments of payroll deductions to the payroll savings plan administrator.

Sec. 6. Section 5 of this chapter applies only to an account in which the static balance does not exceed fifty dollars (\$50).

Sec. 7. Section 5 of this chapter does not apply to accounts containing a static balance that would otherwise be reported to the state under IC 32-34-1-26 as Indiana property.

Sec. 8. The maximum charge that may be imposed on an account with a static balance is one dollar (\$1) per month."

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1179 as printed January 26, 2005.)

PAUL, Chairperson

Committee Vote: Yeas 6, Nays 0.

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